

The Handbook of Competition Enforcement Agencies

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Overview

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The Competition Commission (Comco), located in Berne, is the national competition authority of Switzerland, committed to enforcing the provisions of the Federal Act on Cartels and Other Restraints of Competition (Swiss Cartels Act (ACart)). The ACart focuses on:

- agreements between undertakings affecting competition;
- abuses of dominant positions; and
- merger control.

Generally, the ACart follows the respective EC provisions, but also takes account of legal and economic conditions prevalent in Switzerland.

The Competition Commission

Comco, presided over by Walter Stoffel, who will resign by the end of June 2010 (his successor is not known yet) consists of 12 members who are elected by the Federal Council. The majority of Comco members are independent experts. However, representatives of business associations and consumer organisations are also present in the Commission.

Comco is supported by a full-time Secretariat. The Secretariat has more than 50 scientific collaborators who examine suspected competition law infringements and prepare the decisions for Comco. Furthermore, the Secretariat is in charge of giving legal advice to undertakings and public administrations, and monitors competition on different markets. The Secretariat is divided into three services: product markets, services and infrastructure. Comco decides and decrees on proposals of the Secretariat. Appeals against these decisions may be addressed to the Federal Administrative Court in Berne, whose judgments can be appealed to the Federal Supreme Court in Lausanne.

Reforms of the Swiss Cartels Act and ongoing evaluation

In 1995, the ACart was totally revised. The subsequent revision in 2003 introduced new legal instruments such as a leniency programme, opposition proceeding and direct sanctions, as

well as specifications with regard to dawn raids.

According to article 59a ACart, introduced in 2003, the Federal Council must arrange for the evaluation of the ongoing effects and the functioning of the revised ACart before submitting a report and recommendations to parliament. On 14 January 2009, the Federal Council was presented with a consolidated evaluation report prepared by a task force formed by the head of the Federal Department of Economic Affairs (DFEA). The consolidated report states that the new legal instruments in the revised ACart accurately reflect the legislator's will and have proven to be useful measures in effectively combating ACart infringements. However, the following additional modifications have been proposed:

- institutional reorganisation of Comco to turn it into a totally independent (by excluding lobbyists) and professional institution. Furthermore, one level of authority has been suggested;
- enhancement of international cooperation with other competition authorities;
- harmonisation of the merger control system with the EC system, since the current system of enhancing competition is weak;
- a modification of the Swiss approach to vertical restraints, which is currently deemed to be too harsh, bearing the risk of preventing efficient vertical agreements; and
- complementary recommendations concerning procedure, civil law and sanctions.

In March 2009 the Federal Council invited the DFEA to make concrete proposals on how to adapt the LCart. These are expected to be submitted in spring 2010.

Competition law enforcement

In 2009, numerous mergers were notified to Comco, many of which were parallel proceedings also notified to the European Commission.

Comco treated several cases concerning alleged unlawful agreements and abuses of dominance in 2009. Apart from another heavy fine of 220

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million Swiss francs against Swisscom for abuse of dominance, Comco has for the first time sanctioned vertical restraints. It issued fines for vertical price fixing and for hindering parallel imports. The most recent investigations relate to credit cards, watch components, traffic route and underground engineering.

The price inspector

In Switzerland, an independent price inspector is in charge of monitoring prices and safeguarding the interests of consumers in this respect. In specific cases the price inspector and Comco work together. Pursuant to article 3(3) ACart, procedures under the ACart take precedence over procedures set forth in the law on the monitoring of prices, except in the event of a decision to the contrary taken by common consent by the Competition Commission and the price inspector.

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With more than 30 lawyers, Prager Dreifuss acts for both local and international clients ranging from small and medium-sized businesses to multinationals from all business sectors, as well as private individuals. Our work focuses on Swiss and international business law matters, in particular corporate and commercial; business transactions (M&A); competition and regulatory matters; financing and capital markets; insurance and reinsurance; technology, media and telecom (TMT); private clients; litigation and arbitration; tax; real estate and notarial services.

Prager Dreifuss acts both as counsel for its clients and manages and coordinates its clients' transactions. We regularly represent clients in large and complex lawsuits, and also protect their interests in connection with the government. Some of Prager Dreifuss' lawyers act as arbitrators, counsels in arbitration or deliver expert opinions.

Prager Dreifuss' main offices are located in the hub of Zurich, the financial centre of Switzerland; our branch offices can be found in the vicinity of the government offices in Berne and Brussels, which is of significant importance in competition law matters.

In the area of competition law, Prager Dreifuss represents clients before the Swiss competition authority, both in national and international cases. In addition, Prager Dreifuss advises its clients in compliance matters. Our competition team is led by Dr Philipp Zurkinden, who is a lecturer in Swiss and EC competition law at the University of Basle and the European Institute of Basle. The competition team, which includes the 'father' of the Swiss Cartels Act, Dr Marino Baldi, as of counsel, advises Swiss and international clients on merger control as well as on cartels and dominance cases. Mr Zurkinden and Mr Baldi are authors of various publications on Swiss and EC competition law. Languages: German, French, Italian, English and Spanish.